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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-205194

DATE: March 1, 1982

MATTER OF: Empire Generator Corporation

DIGEST:

Rejection of bid as nonresponsive to IFB soliciting F.O.B. destination bids was proper where unsolicited information prepared for bid and furnished with bid could reasonably be viewed as F.O.B. factory offer.

Empire Generator Corporation (Empire) protests the rejection of its bid as nonresponsive to invitation for bids (IFB) No. F41800-81-B0634 issued by the San Antonio Area Contracting Center, San Antonio Air Force Station, Texas.

We deny the protest.

In response to the IFB, Empire submitted a bid on the standard Government bid form and two separate documents, each labeled "proposal." The bid makes no reference to either "proposal." However, each "proposal," dated the same date as the bid and signed by the same person who signed the bid, states "ATTENTION: F41800-81-B-0634," the number of the IFB governing the procurement. Further, each "proposal" cites the equipment model numbers Empire cited in its bid and repeats the prices Empire bid for the equipment models. Also, each "proposal" has a proposal number and references "proposal work sheets," each of which bears the proposal number shown on the "proposal." The "proposal work sheets" repeat the equipment model numbers and the prices for the equipment. In addition, the "proposal work sheets" contain 18 items, any number of which may be made applicable by Empire placing an "x" in the box beside the item.

The contracting officer rejected the Empire bid because of statements in each of the Empire "proposals" and a couple of the statements that Empire made applicable in each of the "proposal work sheets" by placing

an "x" next to them. If any one of the statements made the Empire bid nonresponsive, it is not necessary for us to consider all of the other Empire statements. Integrated Research & Information Systems, B-196456, February 3, 1980, 80-1 CPD 130.

Empire contends that each "proposal" and the "proposal work sheets" were informational only and were not intended to qualify the bid. However, given the information cited above in those documents, it is apparent that they were prepared specifically for the immediate IFB. Thus, it was reasonable for the contracting officer to assume that the documents were intended to be a part of the bid. Since the documents were considered to be a part of the bid, they were subject to close scrutiny to determine compliance with the IFB. Hughes-Henry Equipment Co., B-200049, November 5, 1980, 80-2 CPD 338.

One of the items next to which Empire placed an "x" in the "proposal work sheets" stated "Price proposed is FOB factory, freight allowed." Since the IFB solicited bids on an F.O.B. destination basis, the contracting officer considered the statement to be nonresponsive to the IFB. The exception to the F.O.B. destination requirement shifted liability for damage in transit from the bidder to the Government and, therefore, provides a basis for rejection. Integrated Research & Information Systems, supra.

Empire contends that the statement should not have been considered effective, since in the "proposal" it stated "DELETE ALL STANDARD TERMS, CONDITIONS, AND PROVISIONS OF OUR COMMERCIAL QUOTATION FORM." In that connection, Empire points out that the standard printed terms in its "proposal" had provided for F.O.B. factory and the provision had been excluded by the statement of deletion. Thus, Empire reasons that it should have been apparent that the F.O.B. factory reference in the "proposal work sheets" was not for application and, if anything, was a clerical error which should have been corrected under error in bid procedures. The Air Force states that it is not entirely clear that Empire intended to delete its standard terms, since, in addition to the typewritten deletion statement, each "proposal"

had a typewritten statement: "READ THIS PROPOSAL CAREFULLY! Terms and conditions of sale are covered in the reverse side herein." However, assuming, without deciding, that the deletion statement overrides the last quoted statement, this does not change the result.

The standard terms of the Empire "proposal" went beyond the F.O.B. factory provision in that they included numerous other provisions. Further, the Air Force points out that the dictionary definition of the word "standard" generally is "regularly used." Since the F.O.B. provision in the "proposal work sheets" only becomes operational by placing an "x" next to the item, it is not necessarily used on a regular basis in every proposal and in that sense is not a standard provision, but rather is optional. In that regard, while the "proposal" speaks of F.O.B. factory, the "proposal work sheets" speak of F.O.B. factory, freight allowed, the latter F.O.B. provision being a different concept than the former. Therefore, the placing of an "x" next to the item in the "proposal work sheets" where there was an overall deletion of standard terms could reasonably be viewed as saving the optional F.O.B. factory provision designated.

The F.O.B. factory offer was not responsive to the IFB requirement for F.O.B. destination bids. Prestex, Inc., B-191919, September 18, 1978, 78-2 CPD 205. A nonresponsive bid must be rejected. Hughes-Henry Equipment Co., supra. Further, the procedures to correct errors in bids are only available to permit correction of bids which are responsive. Happy Penguin, Inc., B-202231, June 16, 1981, 81-1 CPD 497.

Accordingly, the rejection of the Empire bid was proper.

Milton J. Azorola
for Comptroller General
of the United States